

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

175 West Fifth Street, Second Floor, San Bernardino, CA 92415-0490

• (909) 387-5866 • FAX (909) 387-5871

E-MAIL: lafco@lafco.sbcounty.gov

www.sbclafco.org

DATE: FEBRUARY 4, 2005

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #7A – Consideration of Request for Override of Commission Policy Related to Deferral of Processing Applications for Projects Pending Settlement of Litigation – LAFCO 2970A et al.

REQUEST BY:

City of Rancho Cucamonga

RECOMMENDATION:

1. Override the Commission's policy to await the conclusion of environmental litigation prior to consideration of an application for LAFCO 2970A, a consolidated proposal related to projects identified as Etiwanda Creek, Richland Pinehurst and Tracy Development.
2. If LAFCO 2970A is approved, the approval action will include a condition for the consolidated application that requires, if petitioners in the litigation are successful, that the City of Rancho Cucamonga agrees to continue to provide services to the area of LAFCO 2970A for the property tax revenue transferred until such time as the environmental issues are resolved. The language of that condition is proposed to read as follows:

"In the event that a court of competent jurisdiction invalidates the annexation of any of the properties for any reason, the City of Rancho Cucamonga shall enter into an out-of-agency service agreement with the County of San Bernardino for the provision of all services in that area that the City and/or West Valley Mosquito and Vector Control District proposes to take over in the change of jurisdiction process, and present the same to LAFCO pursuant to Government Code Section 56133 within 60 days of such a court determination. The City of Rancho Cucamonga shall provide written consent to this condition within five (5) working days of the approval of this resolution."

BACKGROUND

At the November 17, 2004 hearing, the Commission indicated its intent to approve the request by the City of Rancho Cucamonga to override its policy to await resolution of environmental litigation prior to commencing the hearing process for a proposal. (Copies of the City's letters requesting waiver of the Commission's policy included as Attachment #1.) However, consideration of that position was continued to allow Special Counsel to review options related to a mechanism to alleviate service confusion should the litigation be successful. This hearing will require that the Commission make an official determination regarding the override of its environmental litigation policy and take an official action. If the policy is upheld, no further action at this hearing would be required on Item #7B that follows relating to the consideration of LAFCO 2970A.

At the November hearing, staff recommended upholding the policy to await resolution of environmental litigation prior to commencing the hearing process for the proposals on the basis that it would eliminate the potential for the service confusion that would result if the Court invalidates the environmental documentation for the project thus nullifying the completion of the annexations to the City and the West Valley Mosquito and Vector Control District (hereinafter "West Valley MVCD"). However, after discussion and consideration of concerns, the Commission indicated its intent to override the policy, but continued the consideration to allow Special Counsel to review alternative mechanisms to address the concerns expressed by the Commission regarding service confusion and property tax transfer issues. This additional review was to look at crafting possible language in the format of a condition of approval upon the reorganization to provide for the maintenance of service if the litigation were successful and/or exploring the possibility of deferring the completion of the transfer of territory and/or revenues until such time as the litigation was resolved. The Commission did, however, take positive action at the November hearing to consolidate the three proposals into a single application, to be known as LAFCO 2970A.¹

Special Counsel Jeffrey Goldfarb has reviewed the requests of the Commission. Each of the cases put forward by the Commission – (1) the ability to condition the completion of the action upon either a resolution of the lawsuits in such a way that they are either dismissed with prejudice or that there is a judicial determination that the environmental document for the approval was correct, or (2) the deferral of the transfer of property tax revenues – have issues of concern.

¹ As noted in the report on Item 7B, the purpose of consolidating these individual projects into a single hearing before the Commission was to ensure that no individual approval would have the unintended consequence of creating an unincorporated island, which action would be prohibited by Government Code Section 56744. By consolidating the individual projects into a single action, the Commission is assured that its action on the annexations will not create an unincorporated island.

LAFCO staff and Special Counsel have identified three separate concerns with these approaches:

1. The protest proceeding is a ministerial act, one which has been delegated to the Executive Officer to perform on behalf of the Commission, as there is no discretion allowed under law in its implementation. Once the protest proceeding is completed, the law requires, in the case of an uninhabited annexation, that a resolution of approval be adopted if less than 50% of the landowners protest the action.
2. Government Code Section 57200 directs that the Executive Officer is to prepare the Certificate of Completion if there is insufficient protest to terminate the proposal. Government Code Section 57203 requires that the Certificate of Completion be recorded and continues that failure to provide for processing of the Certificate of Completion through this step for recordation requires that the Secretary of State do so.
3. Finally, the withholding the Certificate of Completion does not provide for a closure on the reorganization. The land use approvals, such as the Tentative Tracts, Development Agreements etc., are contingent upon the annexation to the City in order to become effective. As outlined in the January 19, 2005 letter from the City of Rancho Cucamonga City Manager, this would give the Plaintiffs “additional leverage” in their litigation against the impacted landowners.

Therefore, an alternative approach has been proposed by Special Counsel and LAFCO staff that would allow for a seamless provision of service should the courts decide that further environmental analysis of the development projects would be required. This alternative would require that the City of Rancho Cucamonga commit to entering into an out-of-agency service contract with the County for the provision of the services transferred for the revenues associated with the property tax transfer. The proposed condition would read as follows:

“In the event that a court of competent jurisdiction invalidates the annexation of any of the properties for any reason, the City of Rancho Cucamonga shall enter into an out-of-agency service agreement with the County of San Bernardino for the provision of all services in that area that the City and/or West Valley Mosquito and Vector Control District proposes to take over in the change of jurisdiction process, and present the same to LAFCO pursuant to Government Code Section 56133 within 60 days of such a court determination. The City of Rancho Cucamonga shall provide written consent to this condition within five (5) working days of the approval of this resolution.”

Special Counsel and LAFCO staff have met with representatives of the City of Rancho Cucamonga to review these options and discuss alternatives. The language of the proposed condition, as outlined above, was determined to be an acceptable alternative, as outlined in the letter from the City Manager dated January 19, 2005.

Staff believes that the inclusion of the condition, as outlined, will address the Commission's desire in regard to moving forward with the application prior to the closure of the environmental litigation. A similar strategy was used where the relevant parties executed an out-of-agency service agreement when processing the City of Chino's annexation of the Chino Airport area. Once the Court invalidated the environmental documentation used to approve that annexation, this was the means developed to address service delivery problems while the appropriate environmental documentation was prepared.

Therefore, staff is recommending that if the Commission chooses to approve the waiver of its policy related to environmental litigation, as it outlined at the November Hearing, it include in any resolution the condition identified in this report.

KRM/

Attachments:

- 1 -- September 20, 2004 and October 27, 2004 Letters from City of Rancho Cucamonga City Manager Requesting Override of Policy
- 2 -- January 19, 2005 Letter from City of Rancho Cucamonga City Manager in Support of Conditional Approval
- 3 -- [November 8, 2004 Staff Report on Consideration of Override \(with Attachment #4 of that Document\)](#)
- 4 -- Excerpt from Minutes for November 17, 2004 LAFCO Commission Hearing